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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,802	10/17/2003	Walter Dandy		9637

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/686,802

Applicant(s)

DANDY, WALTER

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 12-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 23, 24 and 26 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the invention of Group I (claims 1-11 and 23-26) in the interview on November 13, 2006 is acknowledged.

Claims 12-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the Interview Summary filed on November 28, 2006.

Drawings

2. The drawings are objected to because they include photographs. 37 CFR 1.84. (b)(1) states:

Black and white. Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (*e.g.*, immunological, western, Southern, and northern), autoradiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.

Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

In this application, photographs are not deemed to be the only practicable medium for illustrating the claimed invention. Furthermore, the photographs are not of sufficient quality so that all details are reproducible in the printed patent.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the four springs with two fore of the person (claim 7); the treadmill platform (claim 9); the sports track (claim 11); and the elastic

loop surrounding the handle bar and frame (claim 24) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: four springs with two fore of the person (claim 7); a handlebar (claims 8, 23, 24 and 25); a treadmill platform (claim 9); and a sports track (claim 11).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by *Ward et al.* (WO 88/00850). *Ward et al.* discloses an exercise apparatus comprising a support frame configuration 12 to define an interior cavity for accommodating a person in standing positions for walking or running on a support surface; and an elastic suspension assembly coupled between the person and the frame for elastically supporting a portion of the person's weight upon bending of the person's knees during a walking or running motion. The apparatus includes at least two wheels 40 on a bottom portion of the support frame for rolling on the support surface. The support frame includes coupling members 140 for attachment to the elastic suspension assembly, the elastic suspension assembly including a harness 134 attachable to the person and elastic straps 136 connecting the harness to the coupling members on the frame. There are four elastic spring straps, two fore of the person and two aft, connected between the harness and coupling members on the frame. A handlebar 150 can be included at the front end of the frame for grasping by the person. The support surface is a treadmill platform 20.

7. Claims 1-5, 8, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by *Harris* (US Pat. App. Pub. No. 2004/0063550 A1). *Harris* discloses an exercise apparatus (Fig. 1) comprising a support frame configuration 12 to define an interior cavity for accommodating a person in standing positions for walking or running on a support surface; and an elastic suspension assembly coupled between the person and the frame for elastically supporting a portion of the person's weight upon bending of the person's knees during a walking or running motion. The apparatus includes at least two wheels 20 on a bottom portion of the support frame for rolling on the support surface. The support frame includes coupling members 40 for attachment to the elastic suspension assembly. The elastic suspension assembly includes a harness 36 attachable to the person and springs 46 connecting the harness to the coupling members. A handlebar 26 is located at a front end of the frame for grasping by the person. The support surface can be a roadway or other surfaces normally encountered during walking, jogging and running (paragraph [0023]). This is considered by the Examiner to include sports track, since roads can be used for marathons and thus roads can be considered a sports track.

The handlebar 26 forms a part of a steering assembly that is operatively coupled to the bicycle-type wheels 20 such that as the handlebar is turned, the front wheel is turned to steer the device.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Harris* (US Pat. App. Pub. No. 2004/0063550 A1) in view of *Beauchamp* (US Pat. 4,375,294). *Harris* has been discussed above, and such discussion is incorporated herein. *Harris* discloses the invention as claimed except for a lost motion coupling device between the handlebar and frame to accommodate changes in the support surface and wind forces (claim 23).

Beauchamp discloses a jogging vehicle comprising a support frame configuration to define an interior cavity for accommodating a person in standing positions for walking or running on a support surface. The support frame includes front and rear wheels on a bottom portion thereof for rolling on the support surface. The front wheel 50 is secured to a front fork 42 pivotally mounted to the support frame so that the apparatus can be steered. To maintain directional stability, a spring is attached between the support frame and the fork. The spring 60 maintains alignment of the wheel as long as the vehicle is maintained in a substantially upright position, but when directional movement is desired, the fork may rotate slightly under restraint as the vehicle is leaned in one direction or the other (col. 2, lines 25-42). This configuration functions as a lost motion coupling device to accommodate changes in the support surface and wind forces.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the steering assembly of the apparatus of *Harris* with a lost motion coupling device between the handlebar and the frame, since *Beauchamp* teaches that use of such a coupling device maintains directional stability so that the vehicle will maintain normal in-line motion as long as the vehicle is maintained in a substantially upright position.

10. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Harris* (US Pat. App. Pub. No. 2004/0063550 A1) as modified by *Beauchamp* (US Pat. 4,375,294) as applied to claim 23 above, and further in view of *Wilkins, Jr.* (US Pat. 5,314,202). *Harris* as modified by *Beauchamp* discloses the invention as claimed except for an elastic loop surrounding the handlebar and frame defining the limits of relative movement therebetween. *Beauchamp* discloses the use of a spring rod 60 coupled between the handlebar and the frame to maintain centered directional stability of the front wheel.

Wilkins, Jr. discloses a notoriously old and well known means for maintaining wheels in a centrally aligned position. A bungee cord is secured around the steering wheel and the frame of the vehicle (col. 4, lines 63-66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the steering assembly of the apparatus of *Harris* in view of *Beauchamp* with an elastic loop, such as bungee cord, surrounding the frame and the handlebar, in order to align the front wheels in a centered orientation, since the use of an elastic cord for center biasing the steerable wheels is well known and disclosed by *Wilkins, Jr.* (col. 4, lines 63-66).

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Harris* (US Pat. App. Pub. No. 2004/0063550 A1) as modified by *Beauchamp* (US Pat. 4,375,294) and *Wilkins, Jr.* (US Pat. 5,314,202) as applied to claim 24 above, and further in view of *Morgan et al.* (US Pat. 6,802,519 B2). *Harris* as modified by *Beauchamp* and *Wilkins, Jr.* discloses the invention as claimed except for a water reservoir for damping steering oscillation.

Morgan et al. discloses a steering damper comprising a hydraulic system to dampen the steering movements of the steering wheel assembly that resists wobbling of the assembly at high speeds or to absorb sidewise shocks to the assembly when traveling (col. 1, lines 5-14). A hydraulic reservoir 19 contains fluid that dampens the relative movement of a paddle 21. The working fluid is disclosed as a hydraulic fluid such as oil.

Water is known to be used as a working fluid in hydraulic systems, since water as compared to oil is ecologically safer, inflammable and commonly available. The examiner takes Official Notice of the equivalence of oil and water for their use in hydraulic systems and the selection of any of these known equivalents to function as a working fluid would be within the level of ordinary skill in the art.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the center biased steering assembly of the apparatus of *Harris* as modified by *Beauchamp* and *Wilkins, Jr.* with a water reservoir for dampening steering oscillation, since *Morgan et al.* teaches that a hydraulic system coupled between the steering assembly and the frame resists wobbling of the steering assembly at high speeds and absorbs sidewise shocks to the assembly when traveling. (col. 1, lines 5-14).

Allowable Subject Matter

12. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose an exercise apparatus as claimed wherein the apparatus includes a lost motion coupling device between the handlebar and frame to accommodate changes in the support surface and wind forces, the coupling including an elastic loop surrounding the handlebar and frame to define limits of relative movement therebetween, and the coupling further including an adjustable magnetic coupling between the handlebar and frame.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shaffer et al. (US Pat. 4,619,462), *Vroulis* (US Pat. 4,813,664), *Bryne* (US Pat. 5,176,597), *Durham et al.* (US Pat. 5,732,964), *Stewart* (US Pat. 6,471,229 B2), *Rempe* (US Pat. 6,554,747 B1), *Bowen* (US Pat. 6,578,594 B1), *Perlstein* (US Pat. App. Pub. No. 2003/0228959 A1) and *Crnkovich* (US Pat. 7,001,313 B1) disclose apparatus having elements relevant to the claimed apparatus.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cary O'Connor can be reached on (571) 272-4715.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Cary E. O'Connor
Primary Examiner


Victor K. Hwang
March 28, 2007